

REMARKS

The Applicant appreciates the courteous and complete examination of the application by the Examiner. In view of the foregoing amendments and the following remarks, a reconsideration of the instant application is respectfully requested.

In order to expedite the prosecution of this application the following arguments of patentability are submitted in connection with the above listed claims. Claims 1-11 are now in this application.

Regarding the Claim § 103 Rejection

The Examiner rejected claims 1 and 2 under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Katz and Yao. The Applicant appreciates the time and effort the Examiner took in finding these prior art references.

The Yao reference does not disclose, teach, or suggest the use of a "heated" zirconium oxide sensor as a gas measurement probe. The Yao reference discloses a process of producing a zirconium oxide precursor that uses heat, but not a heated probed.

Additionally, the Examiner states that Katz discloses "each rod includes an air intake strainer (Figure 3:48 and Figure 7:184)." Referring to Figure 3:48 and column 3, lines 17-27, Katz specifically discloses the screens (48) each covering an upwardly facing opening (44) communicating with an aperture (38). The apertures (38) are perforations located on a tubular member having a tubular wall (36) and are "spaced axially along a lower portion 39 of tubular wall 36". Regarding Figure 7:184, Katz specifically states "Draw tube 180 requires that a hole be prepared in the landfill prior to installation of the draw tube 180 to accommodate the draw tube 180, as opposed to the draw tube 132 which may be driven into the landfill without prior preparation" and that the "draw tube 180 is constructed in the form of a frame 182" (col. 6, lines 7-17). It can be appreciated the Katz reference teaches away from the air intake strainer located at the end of the rod of claim 1, since the screens (48) are specifically located and spaced axially along the tubular wall (36) and not at the end of the tubular wall. Furthermore, the Katz reference specifically describes the lowermost end (46) of the draw tube (32) as being "rounded" with no suggestion of having an intake screen or opening.

Therefore since claim 1 of the present application contains structural differences from Katz, and Katz teaches away from this claim limitation, it is respectfully believed that there is no *prima facie* case of obviousness.

The Examiner states in the Response to Arguments section that "The fact that Katz does disclose the use of air intake orifices all along the sidewalls of each rod does not mean that at least some of the orifices are located at the end of the rod." The Applicant respectfully disagrees with the Examiners modification of Katz because Katz specifically discloses the lowermost end (46, 139) of the draw tube (32, 132) as being "rounded so as to facilitate penetration of the draw tube 32 into the landfill", with no suggestion of having an intake screen or orifice. The Examiner has modified Katz outside of its intended purpose in the rejection of this limitation because Katz specifically states that the orifices are located on the side wall and not the "lowermost end" because the lowermost end is rounded without orifices so it can be inserted into the ground. Furthermore, the Applicant respectfully believes that the Examiner is taking improper liberty with the definition of the phrase "end" in the Examiner's statement of "The air intake strainers located immediately adjacent to the rounded cap are certainly located at the "end" of the rod." The definitions of "end" is "either extremity of something that has length" and "adjacent" is "immediately adjoining without intervening space", as defined at wordnet.princeton.edu/perl/webwn. Using the Examiner's own admission that the strainer of Katz are adjacent the round cap, the definitions of "end" and "adjacent", the specific structural description of the screens and apertures in the Katz reference, and clear illustrations in Figures 2, 3 and 6, it can be appreciated that apertures of Katz are not located at the end of the draw tubes.

Additionally, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Since the Kat reference does not disclose, teach, or suggest the strainer located at the end of the rod that is driven into the pile, then the Examiner used a proposed modification of the prior art in the § 103 rejection of claim 1. It can therefore be appreciated that since the Examiner's

proposed modifications of the Kat reference does change the principle of operation of the prior art, then the Kat reference is not sufficient to render the claims obvious.

As the Supreme Court recently explained "a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S., 82 U.S.P.Q.2d 1385, 1396 (2007). Moreover, "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)). "To facilitate review, this analysis should be made explicit." *Id.* Furthermore, "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U. S., at 36 (warning against a 'temptation to read into the prior art the teachings of the invention in issue' and instructing courts to 'guard against slipping into the use of hindsight' (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964)))." *Id.* at, 82 U.S.Q.P.2d at 1397.

The Applicant requests that the Examiner reconsiders his rejections of the invention also in view of the well established principle that small differences in a crowded art can constitute patentable improvement. See *In re Baum*, 51 USPQ 470 (CCPA 1941) and *In re Lange*, 126 USPQ 365 (CCPA 1960). In considering this principle, the Applicant would also request that the Examiner take note to the court decision which notes that "apparent simplicity has been held to furnish strong argument for patentability where, as here, a need has existed for a structure of the nature disclosed and claimed. The fact that a solution to a problem is simple, or appears to be simple when viewed in retrospect, does not mean that the solution was obvious when it was conceived." See *Ellipse corp. v. Ford Motor Co.*, 171 USPQ 513.

Claim 2 is felt to patentably distinguish over the prior art references because of its above-mentioned dependency from claim 1.

The Examiner rejected claims 3, 4 and 8 under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Katz and Yao as applied to claims 1 and 2, and further in view of Noble.

Claims 3, 4 and 8 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from claim 1.

The Examiner rejected claims 5-7 and 9-11 under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Katz, Yao and Noble, and further in view of Johnson.

With respect to claims 7 and 11, the Examiner states, that Schneider discloses "the use of valves (Figure 2:11.1-11.5) each capable of regulating the flow of air to the probes." However, Schneider does not disclose, teach or suggest the use of a "rotameter type" device for regulating the flow of air to the probes, as in claims 7 and 11. This claimed rotameter type regulating device is equipped in the gas intake pump. The valves (11.1-11.5) in Schneider were already used by the Examiner in the rejection of the electric valves in claim 1, hence the valves (11.1-11.5) can not be used to reject more than one separate and independent limitations. The rotameter type regulating device is a separate and independent structural element from the electric valves of claim 1. Therefore, it can be appreciated that Schneider does not disclose, teach or suggest the use of a rotameter type regulating device equipped in a gas intake pump, thus claims 7 and 11 are believed to be patentably distinct and not obvious over the prior art references.

Claims 5-7 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from claim 1.

With respect to claim 9, none of the prior art references disclose, teach or suggest the use of a "tapered" air intake strainer located at the "end" of the rod. The screens (48, 184) of Katz are specifically designed to cover an upwardly facing opening (44) communicating with an aperture (38), or an open and non-drivable frame (182). The apertures (38) are perforations located on a tubular member having a tubular wall (36) that are spaced axially along a lower portion (39) of tubular wall (36), and they are

specifically not located at the end of the tubular wall and they specially not tapered, as described in claim 9. It can be appreciated that Katz teaches away from the structural limitations of the tapered air intake strainer located at the end of the rod of claim 9.

Claims 10 and 11 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from claim 9.

Conclusion

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Applicant has endeavored to address all of the Examiner's concerns as expressed in the Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above-remarks are made in order to improve the clarity of claim language, to correct grammatical mistakes or ambiguities, and to otherwise improve the clarity of the claims to particularly and distinctly point out the invention to those of skill in the art. Finally, Applicant submits that the claim limitations above represent only illustrative distinctions. Hence, there may be other patentable features that distinguish the claimed invention from the prior art.

With the above amendments being fully responsive to all outstanding rejections and formal requirements, it is respectfully submitted that the claims are now in condition for allowance, and a notice to that effect is earnestly solicited. Should the Examiner feel

that there are further issues which might be resolved by means of telephone interview, the Examiner is cordially invited to telephone the undersigned at (403) 444-5695, or by email at davidguerra@internationalpatentgroup.com.

A two month extension of time fee of \$245.00 is provided.

Respectfully Submitted,

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